Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
MOTOROLA, INC.	)	FCC 11-174
	)	
Application for Consent to Partition and Disaggregate *and Assign* Licenses, and Requests for Waiver of Part 80 Rules to Permit Use of Maritime Frequencies for Private Land Mobile Radio Communications	)	File Nos. 0002438737-39, 0002438741-42, 0002438744, 0002438746, 0002438749, 0002438759, 0002633764, 0002633769, 0002635143
	)	
Amendment of the Commission's Rules Concerning Maritime Communications	)	PR Docket No. 92-257
	)	

To: Office of the Secretary
Attn: The Commission

Petition for Reconsideration Based on New Facts, or
in the Alternative Section 1.41 Request

The undersigned ("Petitioners") submit this Petition for Reconsideration (the "Petition" or "Commission Petition") based on new facts of (1) the above-captioned assignment applications (the "Applications") between Maritel, Inc. ("Maritel") and Motorola Inc. ("Motorola") for the underlying licenses (the "Licenses"), (2) the dismissal of certain mutually exclusive AMTS applications with Mobex, and (3) of the Order on Reconsideration (the "Recon Order" or "Order")[1] that dismissed their respective petitions for reconsideration filed in the above-captioned proceedings seeking reversal of the FCC's prior rulings.[2]

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[1] *Order on Reconsideration*, FCC 11-174, released November 29, 2011.

[2] Petitioners Environmentel LLC, Verde Systems LLC, Telesaurus Holdings GB LLC, Intelligent Transportation & Monitoring Wireless LLC, and Skybridge Spectrum Foundation are hereby appealing the Recon Order's dismissal of their February 3, 2010 petition for reconsideration (the "Motorola Petition") and all of Petitioners, except for Telesaurus Holdings GB LLC, are also petitioning for reconsideration the dismissal of their May 26, 2010 petition for reconsideration (the "Public Coast Petition").

This is presented to the Commission. Also, this is, in a separate pleading, presented to the Bureau. The reason is that Sections 1.115(g) and 1.106 are not clear as to where a petition for reconsideration of this sort must be, or may be, presented.

I.

The Order is in error for reasons given herein including since it avoid the public interest requirement reflected in rules 1.106(c)(2), 1.115(j) and 47 USC §§ 309(d), 405, 308 and 312, and extensive case precedents, both cited previously by Petitioners in these two proceedings, and further below. Other errors are also noted below. The new facts presented here further show the errors. Simply put, the Order attempts to argue that if a private party presents a challenge to a license matter that is procedurally defective, then the substantive facts and law presented should not and cannot be considered no matter how important to the public interest which is the sole criteria for FCC granting, denying, amending, revoking or taking any other licensing action. That turns on its head the purposes of the Communications Act and the mandate to the FCC.

Further, the Order is also internally inconsistent, and at odds with rules. Rules do not state that new facts that are relevant to substance, and not to a procedural defect found to exist, may not be presented where they are timely presented. Also, the Order was of a decision in which the FCC did not simply assert repetition defect, but decided on the substance: see par. 5, "The Commission also rejected…." Thus, the substance was decided upon, and when thereafter the Petitioners submitted the petition for reconsideration of that substantive decision on a timely basis, the substance "was in play" and was not barred by what the Order alleges—a procedural bar due to alleged past mere repetition.

As for new facts presented here, they are presented since the substance is still n play, as noted above, but also since there is no rule that holds that when one part of a case is decided, finding a procedural defect, that on any appeal of that decision, the appellant cannot submit relevant new facts as to the substance.

This is the first opportunity that Petitioners have had to present these new facts in these proceedings since the last pleading periods closed (the time at which Petitioners filed the Motorola Petition and Public Coast Petition).

For the reasons given herein, the FCC should consider and grant this Petition since it provides new facts of decisional significance to the two proceedings as discussed herein.

The new facts are acceptable under FCC rules and court precedent. For example, see Exhibit 1 hereto that contains relevant precedents permitting acceptance and consideration of these new facts (*Butterfield* and others). Also, see Exhibit 2 that contains precedents that show the FCC can revoke licenses and take other actions against licensees who it finds have misrepresented facts. In addition, under Section 1.106(c)(2), the FCC can always accept new facts if it finds their consideration to be in the public interest, which in this case, could not be more evident.

New Facts

The following are new facts that meet the standard described in the following rules: Section 1.115(g), Section 1.115(j), Section 1.106(c)(1), and Section 1.106(c)(2), as well as case precedents cited in the Commission Petition.

There are two groups of new facts: (1) new facts that pertain to why Petitioners were not merely "repetitious" as meant in the Order ("Group 1 New Facts"), (2) new facts that pertain to the substance of the two cases captioned in the Order ("Group 2 New Facts").

The new facts presented below are relevant to the issues in these two groups summarily noted above for reasons that are apparent in the arguments already made by Petitioners in the two cases captioned in the Order (the "Two Cases"). Generally, Petitioners will not below repeat the arguments based upon the new facts since those arguments are already made in previous pleadings in the cases based upon the facts in the same category that were available at the time of said previous pleadings. It would be inefficient to repeat those arguments here.

Group 1 New Facts

1. Since the pleading cycle closed on the preceding administrative appeals in the Two Cases, the Commission has set certain precedents, continuing its practice to deal with the substance of administrative appeals when the FCC apparently believes there is public interest involved, even though it has found or indicated procedural defects where it could, under the logic of the Order, have summarily dismissed said appeals, and thereafter found any further appeals defective unless new facts showed why that procedural defect was in error. One such case is Paging Systems, Inc.'s ("PSI") Petition for Reconsideration of Auction No. 57, including the results (and its own long form), which was clearly procedurally defective in various ways pointed out by Petitioners at the origin of said PSI challenge and at every step of the case up to a final Commission Order. The Commission successfully argued before the DC Circuit Court that PSI lacked interest and standing, and the Court issued its order dismissing the PSI appeal to the Court this

year, which has become a final order of the Court.[3] This case, which has become final this year, is a new fact that demonstrates that the Commission has a practice of dealing with the substance of an administrative appeal on a licensing matter when it for any reason finds there to be some public interest reason to do so, even though it is entirely clear the petitioning party had no interest and standing under the relevant rules (including Section 1.106 and 1.115) and Article III of the Constitution. This case put a cloud on Petitioners' AMTS licenses throughout the country, obtained in Auction No. 57, and all of its business pursuits with those licenses, from year 2005 for approximately 6 years. This has cost Petitioners a large amount of time, lost business opportunities and legal and other expense to defend its licenses in the face of the Commission choosing to process successive appeals by a party that clearly had no interest and standing, and moreover, on the substance, was properly found by the FCC to have argument under FCC rules as to its alleged improper actions by two of the Petitioner entities. In fact, FCC rules specifically permitted all of the activity PSI complained of, which the FCC noted in its decisions in this case. DC Circuit Court has clearly articulated, many times, that once the FCC establishes a practice permitted under its rules, it cannot later deviate without articulating good cause for the deviation. In the instant case, the FCC has deviated in the Order, and in preceding orders in the Two Cases from its policy to deal with the substance in licensing challenges even if the challenge is procedurally defective (untimely in some fashion, or other procedural defect) where there is some apparent public interest reason to deal with the substance.

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[3] See 8/30/10 PER CURIAM ORDER filed [1263031] granting motion to dismiss case for lack of standing [1249311-2], dismissing as moot all remaining motions and withholding issuance of the mandate. Before Judges: Henderson, Tatel and Kavanaugh. [10-1097] (Lister, Mary) and 11/22/10 PER CURIAM ORDER, En Banc, filed [1278893] denying petition for rehearing en banc [1272172-2]. Before Judges: Sentelle, Ginsburg, Henderson, Rogers, Tatel, Garland, Brown, Griffith and Kavanaugh. [10-1097] 11/22/2010 and PER CURIAM ORDER filed [1278897] denying petition for rehearing [1272172-3]. Before Judges: Henderson, Tatel and Kavanaugh. [10-1097] in the **United States Court of Appeals for District of Columbia Circuit.**

2. The Commission issued in April this year Hearing Designation Order, FCC 11-64[4] (the "HDO"). In the HDO, the Commission stated tentative facts and conclusion of law that were virtually the same as Petitioners had presented in numerous challenges to MCLM participation in and licensing in Auction No. 61. The HDO cited Petitioners' challenges and the history leading to the HDO, and in fact Petitioners' petitions provided the primary facts and law contained in the HDO. The HDO is a relevant new fact because, as with as with item 1 above, it is further example of the FCC dealing with facts and law in the public interest, even where those facts had originated in pleadings before the FCC that the FCC found were procedurally defective. That is shown, for example, in the Bureau's decision upon three of Petitioners' petitions for reconsideration challenging Maritime Communications/Land Mobile LLC's license sin Auction No. 61, Order on Reconsideration, DA 07-1196, released March 9, 2007, which included findings regarding Petitioners petitions for reconsideration that "A petition for reconsideration that simply reiterates arguments that were previously considered and rejected will be denied", and "The PSCID held that the Petitioners had…in some cases had raised arguments that had been rejected previously in other proceedings."[5]

This item 2 demonstrates that in any decision by the Commission, including a decision directly on, or is built upon, a private party challenge to licensing actions, that the Commission must always deal with the substance of facts and law in the public interest, regardless of any actual or alleged procedural defects in the private party's attempt to pursue the public interest purposes underlying 47 USC Section 309(d) and Section 405, and related FCC rules on petitions to deny and administrative appeals.

3. In a recent decision, the Commission granted waivers to an LMS licensee, Order, DA 11-2036, released December 20, 2011. Petitioners had opposed the waivers on several basis including that the licensee seeking the waivers had obtained the licenses in violation of Commission auction rules, including no disclosure of affiliates and gross revenues, disclosure of which would have resulted in loss

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[4] *Order to Show Cause, Hearing Designation Order, and Notice of Opportunity for Hearing*, FCC 11-64, released April 19, 2011, *26 FCC Rcd 6520, 76 FR 30154.* (the "HDO" or the "HDO Hearing")

[5] This cited Order on Reconsideration dealt with the core issues in the HDO, including automatic termination of the site-based licenses, and causes for revocation or invalidation of the geographic licenses, as well as appropriate sanctions against MCLM and its principals.

of the 35% bidding credit. In the decision in DA 11-2036, the Bureau and the OET chose to not decide upon those submitted facts and arguments as to the disqualification of the licensee to hold the licenses. However, the decision stated that "the relief granted…in this Order is without prejudice to Havens' [Petitioners'] allegations concerning…[the licensee's] status as an M-LMS licensee." This 2011 decision is regarding a nationwide collection of licenses with a large quantity of spectrum per each region (8 MHz) in which Petitioners compete in most all the same areas with a similar quantity of spectrum in the same LMS radio service. It is thus a major precedent for the FCC to hold that facts and law of decisional importance as to the qualification of the licensee to hold the subject licenses, and the validity of the licenses, need not be decided at all in a properly filed challenge, but where said facts and law can be pursued in a subsequent, undefined time and manner. If this precedent is applied in the instant case of the Order (which has the Two Cases), then the FCC should have found that Petitioners' new facts as to the substance of the Two Cases could be pursued at a future time and manner, even if they were not relevant to what the FCC believes is the only issue that could be addressed (the "repetitive" procedural issue).

The above 3 items are new facts that illustrate that the decision in the Order is inconsistent with the decision in these 3 items. However, the first two items above are consistent with the public interest behind all permitted licensing action challenges, and the third item above at least preserves important facts and law presented in a licensing challenge, which the authority at the time does not want to deal with, allowing pursuit of those in a future time and manner. While that third item appears inconsistent with the Administrative Procedures Act requirement that each material element of an adjudicatory appeal to an agency must be disposed of by some explanation in the decision, it nevertheless does not artificially ignore or attempt to extinguish said relevant facts and law.

Group 2 New Facts

1. The HDO. Put in what discussion I have already in draft petition. Petitioners have properly sought under FOIA facts and information that have been redacted in the HDO. To this day those facts and information have not been provided to Petitioners. Those facts include facts relevant to Maritel's

ownership and control. Therefore, Petitioners assert prejudice in the HDO due to those facts of decisional importance being withheld, and for the same reason Petitioners hereby assert prejudice in this proceeding with regarding the Maritel licensing case captioned in the Order (the "Maritel Case").

2. After the hearing in the HDO commenced, MCLM filed bankruptcy. Thereafter, Petitioners properly became a party in the bankruptcy case, which to this day the court has accepted, and granted to Petitioners rights to participate in the bankruptcy, including to conduct discovery. Through the discovery to date, and in hearings before the court, and in review of pleadings filed by MCLM and other parties, new facts are becoming apparent that are relevant to the Maritel Case under the Order. These include, but are not limited to, the following: (1) Donald DePriest assigned apparently all of his interest in Maritel to Mr. Oliver Phillips and others in exchange for sums owed by Mr. DePriest and MCLM to Mr. Phillips and others. It is not clear that that transfer of shares in Maritel involved a transfer of control. Control in an entity is not based upon a percentage of equity ownership (of profits, capital account interest, and other economic interest), but depends upon the control and management rights held in formal documents or by some de facto arrangement. The instant Maritel Case is in large part based upon the still unsolved questions as to when Donald DePriest actually gave up both de jure and de facto control in Maritel which he alleges was prior to Auction No. 61, however, that was before the date of Maritel filing for transfer of control from Donald DePriest to others after 2006. This is an ongoing issue of discovery in the bankruptcy case. In addition, the bankruptcy involves an issue of Donald DePriest personal guarantees and backing of a large percentage of all of the alleged debt of MCLM, including during a period when Maritel alleges he controlled Maritel. In order to back that quantity of debt, it appears that Mr. DePriest was relying on some degree upon his interest in Maritel, and utilizing his control in both MCLM and Maritel to obtain financing from related parties in both cases. It is not yet possible to present the extensive documentation and draw conclusions regarding facts that are being discovered in this bankruptcy relevant to the Maritel Case. However, Petitioners will supplement this Petition once they are able to do so. In addition, Petitioners are participating in the bankruptcy for purposes of the HDO hearing as reflected in their filings in both the bankruptcy and the HDO hearing. This participation is in the public interest underlying the HDO hearing.

3. See Exhibit 3 hereto filed confidentially with the FCC. This Exhibit 3 contains text prepared by Petitioners and an attached document from MCLM described as its business plan developed in 2006, soon after Auction No. 61. Petitioners do not believe this must be filed confidentially for reasons given in Exhibit 3, however, out of an abundance of caution Petitioners do so.

4. Further, in the MCLM bankruptcy proceeding, Petitioners have recently obtained two sworn statements in a case in US District Court entitled Greene v. Mobex in year 2002. Two sworn statements in that case (attached in Exhibit 4 hereto) include information by the former CFO of Mobex, Michael Sarina, and Garrison Marci that after purchasing the AMTS licenses from Regionet and Watercom, Mobex did not invest in the stations infrastructure and discontinued obtaining required equipment to maintain its main customer (a barge company), but instead spent its resources on selling off the spectrum it had just bought. Petitioners are obtaining at this time all documents in that case. They are not all available on PACER. Upon obtaining the full set of documents and reviewing them, Petitioners expect to present further relevant new facts. These new facts show that Mobex purchased the AMTS licenses not for valid purposes under the Communications Act, which is to use the spectrum, but to warehouse, and traffic in spectrum, purely for speculative purposes. These statements clearly show that impermissible purpose. This illustrates that when Mobex filed the alleged mutually exclusive applications that are subject of the second of the Two Cases in the Order that it had no legitimate intent to obtain the licenses as is the requirement in any application for a license. This also supports Petitioners' assertion that the Mobex applications, deemed to be MX, were facially defective and did not even demonstrate the required continuity of coverage (overlapping multiple stations covering the required length of navigable waterway).

Respectfully:

Environmenel LLC, by

[Filed electronically. Signature on file.]
Warren Havens
President

Verde Systems LLC, by

[Filed electronically. Signature on file.]
Warren Havens
President

Telesaurus Holdings GB LLC, by:

[Filed electronically. Signature on file.]
Warren Havens
President

Intelligent Transportation & Monitoring Wireless LLC, by

[Filed electronically. Signature on file.]
Warren Havens
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Skybridge Spectrum Foundation, by

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_____
Warren Havens, Individually

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December 29, 2011

Declaration

I, Warren C. Havens, individually and as President of Petitioners, hereby declare, under penalty of perjury, that the foregoing Petition for Reconsideration Based on New Facts, or in the alternative Section 1.41 Request, was prepared pursuant to my direction and control and that all of the factual statements and representations, of which of I have direct, personal knowledge, contained therein are true and correct.

/s/

[Filed Electronically. Signature on File.]

_____

Warren C. Havens

December 29, 2011

Certificate of Service

I, Warren Havens, certify that I have, on this 29th day of December 2011, caused to be served by placing into the USPS mail system with first-class postage affixed, unless otherwise noted, a copy of the foregoing Petition for Reconsideration Based on New Facts, or in the alternative Section 1.41 Request to the following:[6]

Jason D. Smith, President
MariTEL, Inc. and its subsidiaries
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Kurt Desoto (legal counsel to Motorola)
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[Filed Electronically. Signature on File.]

Warren Havens

[6] The mailed copy being placed into a USPS drop-box today may not be processed by the USPS until the next business day.